

**IN THE UNITED STATES DISTRICT COURT  
FOR THE MIDDLE DISTRICT OF NORTH CAROLINA**

<b>BURKE BOWERS, et al.,</b>	)	
	)	
<b>Plaintiffs,</b>	)	
	)	
v.	)	1:15-CV-732
	)	
<b>BB&amp;T CORPORATION, et al.,</b>	)	
	)	
<b>Defendants</b>	)	
	)	
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<b>BREWSTER SMITH, JR., et al.,</b>	)	
	)	
<b>Plaintiffs,</b>	)	
	)	
v.	)	1:15-CV-841
	)	
<b>BB&amp;T CORPORATION, et al.,</b>	)	
	)	
<b>Defendants</b>	)	
	)	

**DEFENDANT CARDINAL INVESTMENT ADVISORS, LLC'S MOTION TO  
DISMISS THE CONSOLIDATED SECOND AMENDED COMPLAINT**

Pursuant to Rule 12(b)(6) of the Federal Rules of Civil Procedure and Local Rules 7.2 and 7.3, Defendant Cardinal Investment Advisors, LLC, (“Cardinal”) by and through its undersigned counsel, hereby move this Court to dismiss Plaintiffs’ Consolidated Second Amended Complaint (“Complaint”) (Dkt. # 88), for failure to state a claim upon which relief can be granted against Cardinal. Plaintiffs have brought claims for relief under the Employee Retirement Income Security Act of 1974, as amended (“ERISA”), with respect to the BB&T Corporation 401(k) Savings Plan (the “Plan”), and specifically, against Cardinal in its limited role as an outside investment consultant to the

Compensation Committee of the Board of Directors (the “Committee” or “Compensation Committee”) of BB&T Corporation (“BB&T”) with respect to the Plan.

**GROUND FOR DISMISSAL UNDER FED. R. CIV. P. 12(B)(6)**

1. Plaintiffs’ Counts I-IV of the Complaint should be dismissed as a matter of law because Plaintiffs complaint does not contain well-pleaded factual allegations and, instead only contains mere conclusory assertions. Plaintiffs have failed to allege any specific facts that show that Cardinal transcended its role as an investment consultant for BB&T and exercised discretionary decision making authority with respect to the investments and other alleged conduct giving rise to its claims for breach of fiduciary duty against Cardinal.

2. The investment consulting services provided by Cardinal to the Compensation Committee do not constitute fiduciary “investment advice” under ERISA, in accordance with recent DOL rulings where, as in this case, the consulting services are being provided to a sophisticated independent fiduciary, such as the Compensation Committee, and there are no factual allegations that show that Cardinal was paid by the Plan.

WHEREFORE, Defendant Cardinal Investment Advisors, LLC respectfully requests that this Court enter an order dismissing Plaintiffs’ Consolidated Second Amended Complaint with prejudice as to Cardinal pursuant to Federal Rule of Civil Procedure 12(b)(6) and Local Rules 7.2 and 7.3.

Dated this 7<sup>th</sup> day of February 2017.

Respectfully submitted,

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By /s/ Robert J. Garrey

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\*Appearing by Special Appearance

**ATTORNEYS FOR DEFENDANT  
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## CERTIFICATE OF SERVICE

This is to certify that on the 7<sup>th</sup> day of February 2017, I filed the forgoing document using the courts CM/ECF system, which will automatically send notification of filing to the following parties:

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*/ s/ Robert J. Garrey*

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